IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

MACA.No. 1418 of 2007

OPMV.884/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
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APPELLANT/3RD RESPONDENT

NATIONAL INSURANCE COMPANY LTD.,
REP. BY ITS MANAGER,
KOCHI REGIONAL OFFICE,
T.P.CELL, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: PETITIONER AND RESPONDENTS 1 & 2
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1. V.E.RAVOOF, VELUTHERIL,
NADACKAL P.O., ERATTUPETTA.

2. M.MURUGAN, NO.64, KOLLAPATTI,
ANIMUR P.O., TIRUCHENGODE TALUK,
TAMILNADU.

3. PONGIANNAN S., S/O SENGODA GOUNDER,
22, SAMUDRAPALAYAM VILLAGE,
KOMARAMANGALAM POST, TIRUCHENGODE,
TAMILNADU.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

C.M. Appln No 1384 of 2007 and
M.A.C.A. No 1418 of 2007

Dated: 11th September 2007

JUDGMENT

Radhakrishnan, J.

There is a delay of 109 days in filing this appeal. We have gone through the affidavit filed in support of the petition for condonation of delay. Sufficient grounds have not been made out to condone the delay.

2. Appeal was preferred by the Insurance Company against the award passed by the M.A.C. Tribunal, Pala. Claimant had sustained injuries in a road accident on 28.5.2002. He was driving a jeep bearing reg. No KL-5/K 7741. When the vehicle reached the place of accident, lorry driven by the second respondent at an exorbitant speed came from the opposite direction and hit the jeep as a result of which claimant sustained injuries and was taken to Fort Hospital, Palakkad. Later he was taken to Matha Hospital, Thellakom. He had fracture on the neck of right femur, hip displaced, type II open

communited segmental fracture of right femur and other lacerated injuries.

3. Respondents 1 and 2 before the Tribunal remained ex parte.

4. In order to establish the claim no oral evidence was adduced on the side of the claimant. However, he has produced Exts. A1 to A10 documents. Ext. A10 is the disability certificate dated 25.8.2003 issued by the Lecturer in Orthopaedics, Medical College, Kottayam which shows that the claimant has difficulty in squatting and had anterior-medial bowing of right femur and tenderness lateral aspect of greater trochanter. There was restriction of movements of right hip terminal 40 degrees flexion, 20 degrees internal and external rotations and 30 degrees abduction restricted. X-ray of the right femur indicates union of fracture shaft in 10 degrees anterior medial bowing. On the basis of clinical findings disability was assessed at 15%. Insurance Company has examined RW-1 doctor in Matha Hospital to show that claimant has no disability at all. Ext. A7 was shown to RW-1 who issued the same. In cross-examination RW-1 stated that he did not assess the disability while issuing Ext A7. Ext. A10 was also shown to RW-1 and according to him he was unable to assess the physical state of the claimant. Tribunal found no

reason to disbelieve Ext A10. Consequently disability at 15% was accepted and an amount of Rs 61,200/- was awarded as compensation for partial disability. On all other heads, in our view, reasonable amount was awarded. In all a sum of Rs 1,67,776/- was awarded as compensation. Considering the nature of the injuries sustained and the percentage of disability, we are of the view that the Tribunal has awarded just and reasonable amount as compensation. We find no reason to interfere with the same. In such circumstances, both the petition to condone the delay and the appeal stand dismissed.

I.A. 1679 of 2007 is also dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
A.K. BASHEER
Judge

11/09/2007
en

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